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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/633,242

08/01/2003

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12/04/2008

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EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT

PAPER NUMBER

2445

MAIL DATE

DELIVERY MODE

12/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|--|--|--|--|
| <p align="center">Advisory Action Before the Filing of an Appeal Brief</p> | Application No. 10/633,242 | Applicant(s) STAFFORD ET AL. | |
| | Examiner Jeffrey R. Swearingen | Art Unit 2445 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Larry D Donaghue/
Primary Examiner, Art Unit 2454

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive.

Applicant argued Kraml failed to disclose "when the Internet packet is being received when the channel scan request is received, wherein each of the plurality of channels have a different associated radio frequency (RF) signal; scanning at least one other channel of the plurality of channels, but less than all of the plurality of channels; after scanning the at least one other channel, tuning to the one of the plurality of channels and transmitting at least one outbound Internet packet; and scanning at least another channel of the plurality of channels." Applicant's specific arguments are broken out below.

Applicant argued Kraml failed to disclose when an Internet packet is being received. The Internet packet received is the exchange of the control signals in Kraml. It is commonly known to one of ordinary skill in the art that control signals are transmitted as packets.

Applicant argued Kraml failed to disclose receiving a channel scan request. Kraml "receives a channel scan request" when the communication application does not properly initialize, therefore telling the component controller to scan for additional channels to locate control signals.

Applicant argued Kraml failed to disclose scanning a plurality of channels or determining whether a packet is being received by a channel or scanning at least one but less than all of the channels and tuning to the one of the channels to transmit the packet. Kraml checks to see whether a control signal (packet) is received. If the control signal (packet) is received, the communication application properly initializes. If the control signal (packet) is not received, the component controller initiates a scan of other channels (at least one but less than all of the channels) to receive a control signal (packet). In order to receive a control signal (packet) on the new channel, the component controller must send appropriate request signals (transmitting an outbound Internet packet) to the channel. If the new channel does not respond, then the component controller scans additional channels while seeking the appropriate control signals (packets) to initialize the communications application.

Applicant argued Kraml failed to disclose "when a Transmission Control Protocol (TCP) connection is established between a source and a destination, receiving a network interface protocol channel scan request; and when the network interface protocol channel scan is received, hopping between a channel supporting the TCP connection within a wireless local area network (WLAN) having an associated radio frequency (RF) signal and other channels of the WLAN having other associated RF signals and transmitting on the channel supporting the TCP connection to avoid excess latency in acknowledging receipt of a packet formatted in accordance with the Internet Protocol or a portion of the packet during scanning of the other channels of the WLAN." Applicant repeated the arguments pertaining to claim 1, which are addressed above.

Applicant argued Kraml failed to disclose "memory operably coupled to the processing module, wherein the memory stores operational instructions that cause the processing module to: process data in accordance with an utility application to produce a message; process the message in accordance with a transport application to produce a packet; process the packet in accordance with an Internet Protocol to produce at least one of the datagram; generate a channel scan request in accordance with the transport application; determine whether one of the datagrams is being received when the channel scan request is generated; when the one of the datagrams is being received when the channel scan request is received, scan at least one other channel of the plurality of channels, but less than all of the plurality of channels; after scanning the at least one other channel, tune to the one of the plurality of channels and transmitting at least one outbound datagram; and scanning at least another channel of the plurality of channels." Applicant repeated the arguments pertaining to claim 1, which are addressed above.

Applicant argued Bendinelli failed to disclose the same elements that Kraml failed to disclose, but repeated the arguments pertaining to claim 1, which are addressed above.

Applicant presented a lengthy discussion of Applicant's invention; however, claim limitations are read in light of the specification but the specification is not read into the claims. Applicant seems to explain the invention is designed to listen to multiple units attempting to talk to the receiving wireless unit, but Applicant's claims are written to allow for a standard wireless device which channel hops upon discovering congestion with a node. Applicant should revisit the claim language in light of this explanation in order to claim Applicant's invention more clearly.